Supreme Court, U.S.
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APPENDICES VOLUME III OF III

(243a-362a)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 95-70664

WILLIAM C. SARSFIELD

Petitioner,

v.

OFFICE OF THE COMPTROLLER OF THE CURRENCY,

Respondent.

No. AA-EC-93-144

WILLIAM C. SARSFIELD

Petitioner,

v.

UNITED STATES DEPARTMENT OF THE TREASURY,

Respondent.

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120 pp

[June 8, 1994 (Vol. II, p. 290-293, and 296 only)]

BEFORE THE
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER
OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:

WILLIAM C. SARSFIELD, Former Chairman of the Board and Current Director;

SEQUOIA NATIONAL BANK,
SAN FRANCISCO, CALIFORNIA

Transcript of Proceedings

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(1) (The document referred to, (2) Respondent's Exhibit No. 9, (3) having been marked for (4) identification, was received (5) in evidence.)

(6) BY MR. MC CANN:

(7) Q. By the way, Mr. Sarsfield, did your role and (8) position in the Bank change in August 1992?

(9) A. Yes, it did. August 24, 1992, by Board (10) resolution, my position as an executive officer ceased, (11) and I went to -- and the by laws were changed. I went to (12) a nonexecutive officer status, continuing to keep the (13) title as chairman. Then, I had -- I continued on in a (14) consulting capacity until -- on a month-by-month basis, (15) but with that activity declining each month. I did, by(16) the way, because Mr. Granholm was appointed as acting (17) president, subject to the OCC's approval, and because of a (18) time sequence he could not take the job until the end of (19) the first week in September, I stayed on in kind of a (20) senior officer present -- to use an old military term -- (21) until the first week in September, then Mr. Granholm took (22) over. Thereafter, I was in the capacity, in addition to (23) being a director, as a consultant on a reduced basis.

(24) Q. Did you -- were you in favor of this change?

(25) A. To tell you that I was enthusiastic about it

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would be not true, but I felt it had to be done. The Board was not unified, and I felt that I had to step aside. I just couldn't keep -- that I didn't have the leadership, for whatever reason, to pull everybody together, that I was becoming a matter of contention. The best thing to do was to step aside and let other people step up. I did not do that with great enthusiasm, but I thought it was the proper thing to do, or the only thing that made good sense at the time.

Q. And following that change in your role in the Bank, were you involved in the day-to-day management of the Bank any longer?

A. No, I was not. I did continue on as a consultant. We had some litigation going that I spent some time on. I also spent some time trying to help Mr. Granholm on the collection of loans, where I was intimately -- or I had detailed knowledge of the state or the status of the loan borrower. I did my very best to preserve our deposit base. I knew almost all of our large customers, and I did my best to keep those deposit account, and I was available, if called upon.

Q. All right.

A. I moved my office out of the Bank, by the way.

MR. MC CANN: We'll mark next, for identification, Sarsfield Exhibit 37. It's near the back

(1) of the box that we have for the Court. (2) (The document referred to was (3) marked Respondent's Exhibit (4) No. 37 for identification.)

(5) BY MR. MC CANN:

(6) Q. I'll ask you if you recognize that document, Mr. (7) Sarsfield?

(8) (The document was proffered to the Witness.)

(9) A. Yes. (10) MR. MC CANN: Does the Court have his copy of (11) that yet?

(12) THE WITNESS: This was a document that I (13) prepared. I had met a few days prior to the preparation (14) of this document with the members of the Compliance (15) Committee, Mr. Bray, Mr. Puccinelli, Mr. Bolles, and also (16) with Victor Granholm. We discussed the need to make some (17) changes. So, I took the bull by the horn in following the (18) OCC's format of the CAMEL, capital, assets, management, (19) earnings and liquidity, and prepared a proposed action (20) plan that I submitted initially to the Compliance (21) Committee; and, then, in turn, it was submitted on August (22) 24, to the Board of Directors.

(23) BY MR. MC CANN:

(24) Q. What was your purpose for preparing that action (25) plan and presenting it to the committees as you just

described? A. My role was changing at this time, and I wanted to lay out what I thought was a plan that would accomplish the Consent Order and could be followed by interim management, and that was a document that would explain what was happening and explain the change of management. It was a document that I hoped would pull everybody together and, in turn, set some clear-cut goals that we could all accomplish, that we could all agree on; and take steps to accomplish.

Q. Was that plan adopted by the Board?

A. Yes, sir, it was.

Q. And what was your understanding as to who was then primarily responsible for following the plan after its adoption by the Board?

A. Well, it was -- everybody was to be responsible for it. The Compliance Committee took on the job of trying to get this thing done, in making sure it was done on a day-by-day basis. The acting CEO would be the one, the key one, to implement and carry this thing out.

Q. And who was the acting CEO at that time?

A. Mr. Granholm.

MR. MC CANN: Next, for identification, Sarsfield Exhibit 17, an August 25, 1992 letter.

(25) //

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(1) the Board, I'm quoting from it: ". . . I will have no (2) management responsibilities." And I've offered my (3) services as a consultant to the Bank at and hourly rate of (4) $75. This, incidentally, was declining in total number of (5) hours each month.

(6) Q. By the way, speaking of hours and compensation, (7) starting in March 1992, when the Consent Order was signed, (8) did you make any adjustments to your compensation?

(9) A. Yes, sir. I had been paid $74,000 a year to (10) serve as an executive officer. When we signed the Consent (11) Order at the March Board Meeting, I voluntarily reduced my (12) salary $14,000, from $74,000 down to $60,000. I'd also (13) had had an arrangement with the Bank that it was not (14) required that I spend all of my time there. I'd kept my (15) consulting practice going. What I did during this period (16) of time, I substantially increased my hours -- this is (17) noted, in fact, in some of the examination reports -- to (18) approximately 60 hours a week. Also, I took steps to (19) eliminate some other expenses and eliminated the auto (20) allowance that all of the officers were receiving. That (21) was a net reduction of about 20-some thousand dollars in (22) additional benefits -- not just received by

me, but by (23) others. So, I increased my hours and decreased my pay.

(24) MR. MC CANN: Next, for identification, as (25) Sarsfield Exhibit No. 6, September 9, 1992 Progress . . . .

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(1) A. My math, if my recollection is correct, I was in (2) the intensive care ward, or in the hospital, at Barton (3) Memorial Hospital up in Lake Tahoe. I had been following (4) Mr. Granholm coming in. Labor Day, we went up to Lake (5) Tahoe, as we did every year; and, up on Angora Peak, my (6) stomach ruptured, or my ulcers, that I had been suffering (7) from for about a year and a half. Lost half my blood and (8) my wife got very mad at me. She thought I was dead. I (9) was in the hospital so I didn't have much of a role in (10) working any of this at all.

[June 7, 1994 (Vol. 1, pp. 103-105, 152, only)]

BEFORE THE
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER
OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:
WILLIAM C. SARSFIELD, Former Chairman of the Board and
Current Director;
SEQUOIA NATIONAL BANK,
SAN FRANCISCO, CALIFORNIA

Transcript of Proceedings

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[A.:] . . . National Bank Examiner.

Q. When did -- were you supervised by anyone when you did the June 1992 examination for Sequoia National Bank? You were the examiner-in-charge on that?

A. I was the examiner-in-charge. That is correct.

Q. Were you supervised by someone?

A. My field manager supervised me.

Q. Did your field manager supervise on the other approximately 15 examinations in which you had previously been an examiner-in-charge?

A. I've always been assigned to a field manager. I've had several field managers over the period of time.

Q. Mr. Sander, I'm going to ask you to turn to OCC Exhibit 63, if you would, and I'll try to find mine.

A. (Witness complied.)

Q. Do you have OCC Exhibit 63, Mr. Sander?

A. Yes, I do.

Q. Now, I believe you testified that you used this document as part of your December 31, 1992 examination. Is that correct?

A. Yes, we did.

Q. And how did you use it?

A. We looked at this document and we compared the Bank's compliance with this document.

Q. So you took Exhibit 63 and then took your -- the

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information and data you had gathered as part of the December 1992 examination to compare whether that data reflected compliance with Exhibit 63. Is that correct?

A. Yes. Q. And how did you determine to use Exhibit 63 for that comparison?

A. Because this was a document that was provided to us.

Q. By whom?

A. By the Bank.

Q. What individual at the Bank?

A. We sent out a request letter to the Bank.

Q. Do you know which individual gave you this document?

A. I do not recall the specific individual.

Q. It wasn't Mr. Sarsfield, was it?

A. As I say, I don't recall the name of the specific individual.

Q. But you can recall that Mr. Sarsfield was not, in December 1992, involved with the Compliance Committee or compliance with the Consent Order, right?

A. Yes. Q. And do you recall that, even though you can't recall the specific individual, are you able to agree that it was not Mr. Sarsfield?

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A. Yes.

Q. Now, so you performed this comparison of the data and information you had as a result of the examination. You compared it to Exhibit 63 and concluded that the Bank was not in compliance with the policies as reflected in Exhibit 63. Is that correct?

A. That is correct.

Q. Now, do you know when Exhibit 63 was prepared?

A. I don't recall.

Q. Let me ask you to look at the second page, upper left-hand corner, it says, "Section 1.01," and then is says, "Date." Do you see that?

A. Yes. Q. That's December of 1986, correct?

A. Correct.

Q. And, if you look through the rest of the document, you will see consistently that same date of December 1986 appears?

A. (After a pause.) Except for the last four pages.

Q. Okay. Are you referring to the --

A. The exhibit.

Q. -- the exhibit. So you can't tell when that was prepared by looking at it, can you?

A. No.

Q. But it does say that -- there's blanks where it . . . .

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Q. Okay. And, when you got the report, did you communicate to Mr. Sarsfield what you're telling me here now about what was missing?

A. As I recall, we communicated to the Bank observations on the Article VII.

Q. Well, let's stay with Article VI.

A. I mean Article VI, I'm sorry. As I recall, we communicated to them in April, I do believe, on liquidity issues and volatile liabilities.

Q. Well, my question is: You've told me here this afternoon that you did get a plan, or some information. It addressed issue (2)(a) and issue (2)(b), which are the only ones we've covered so far; but that you felt there was some additional analysis lacking beyond the information provided. Is that roughly accurate? A. The analysis was lacking.

Q. And did you tell Mr. Sarsfield what analysis was lacking that you wanted to see?

A. I don't specifically recall us mentioning that.

Q. Let me ask you this: Did you ever ask Mr. Sarsfield for any information that he failed to give you?

A. I'm not aware of any.

Q. Did you ever ask him to do anything that he refused to do?

A. I can't think of an example, no. . . .

(ER 42)

[June 9, 1994 (Vol. III, pp. 734-735, only)]

BEFORE THE

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER

OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:

WILLIAM C. SARSFIELD, Former Chairman of the Board and

Current Director;

SEQUOIA NATIONAL BANK,

SAN FRANCISCO, CALIFORNIA:

Transcript of Proceedings

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(1) [Q] . . . is the, what we called, I think, the Sarsfield Action (2) Plan. I think you might have heard Mr. Sarsfield testify (3) about that in the last couple of days.

(4) A. Yes.

(5) Q. And do you recall Mr. Sarsfield testifying that, (6) in fact, this was a plan he put together and gave to the (7) Board of Directors as his sort of final act, as he retired (8) from active management of the Board. Right?

(9) A. Yes.

(10) Q. And I believe you just acknowledged in response (11) to Mr. Bloise's questions that one could characterize this (12) as a plan to deal with, for instance, the liquidity (13) management of the Bank. Right?

(14) A. Yes.

(15) Q. The problem you have, which is the same one Mr. (16) Sarsfield has, is that the management of the Bank, (17) after he left management, didn't fully implement this (18) plan, did they?

(19) A. No.

(20) Q. That's not Mr. Sarsfield's fault, is it?

(21) A. I don't know if I can answer that because I hold (22) the Board accountable for the condition of the Bank.

(23) Q. But you were aware that Mr. Sarsfield was no (24) longer involved in management -- right? -- after August.

(25) A. That is correct.

(ER 42)

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Q. He wasn't on the Compliance Committee. Right?

A. That is correct.

Q. And are you aware that Mr. Sarsfield attended the meeting of the Board in August at which the Board adopted this plan?

A. I don't specifically recall.

Q. Well, you recall Mr. Sarsfield at least testifying to that while you were here in court?

A. Yes. Q. So, Mr. Sarsfield, knowing he was going to leave management, put together a plan before he left management and made sure the Board adopted that plan . Right?

A. Yes.

Q. And if he's no longer involved in management at the Bank, if he's not on the Compliance Committee, wouldn't you agree that the failure -- if there was any -- to implement any portion of this plan was the responsibility of the ongoing management of the Bank, not Mr. Sarsfield, and of the Compliance Committee, not Mr. Sarsfield?

A. No. I do not agree with that.

Q. I guess that's why we're here.

A. Yes.

Q. Because this plan would have accomplished complete literal compliance with the Consent Order if the...

[June 7, 1994 (Vol. 1, p. 233 only)]

BEFORE THE
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER
OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:
WILLIAM C. SARSFIELD, Former Chairman of the Board and
Current Director;
SEQUOIA NATIONAL BANK,
SAN FRANCISCO, CALIFORNIA

Transcript of Proceedings

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A. Who was the temporary president.

Q. And the temporary president before her was Mr. Granholm? A. I think so.

Q. At any rate, you weren't dealing with Mr. Sarsfield in this area in the period September, October, November, December, and into January 1993. Correct?

A. That's correct.

Q. And did you have an understanding, during the period September 1992 through December 1992, who in the Bank had the responsibility for compliance with Article X?

A. No, I don't. I don't know -- I do not know who was responsible for compliance with Article X.

Q. But, at any rate, you certainly weren't dealing with Mr. Sarsfield with respect to the Bank's compliance with Article X, were you?

A. Well, I can't answer that given your time frame;

but I can tell you that, during the December 1992 exam, when we were there during January and February of 1993, that I did not deal with Mr. Sarsfield. But I can't answer that for the time period during the fourth quarter of 1992 because I wasn't involved in the monitoring or examination of the Bank at that time.

MR. MC CANN: Your Honor, this would be the logical cut-off point for the cross. I'm not done, but I . . . .

[Rec. Dec. 28, 1993]

UNITED STATES OF AMERICA

DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

AA-EC-93-144

IN THE MATTER OF: WILLIAM C. SARSFIELD,
Former Chairman of the Board and Current Director;
KENT D. GLOVER, Former President and Current Director;
CHARLES PUCCINELLI, PETER P. BOLLES, THOMAS J.
NIEDERMEYER, SR., and RICHARD C. VAN VALER,
All Former Directors;
JOHN F. HENNING, JR., and NORMAN I. KRUG,
Current Directors, of SEQUOIA NATIONAL BANK,
San Francisco, California

Answer of Respondent William C. Sarsfield
to Notice of Assessment of a Civil Money Penalty

TO: The Comptroller of the Currency
of the United States of America

Respondent William C. Sarsfield, on behalf of himself alone, answers the Notice of Assessment of a Civil Money Penalty in the above-reference action as follows:

ARTICLE I

1. Admit.
2. Admit.
3. Admit.

ARTICLE II

1. Respondent admits the allegations in this paragraph, except that Respondent denies any violation of the Order and further denies the accuracy of the description of such alleged viola-tions contained in the June 30, 1992 ROE, and the December 31, 1992 ROE.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Denied.
9. Denied.

ARTICLE III

1. Denied.

AFFIRMATIVE DEFENSES

Respondent alleges that as of the first week of September, 1992, Respondent was no longer an officer of the subject Bank active in its management. Without admitting the accuracy of any of the alleged violations of the Order, Respon-dent alleges that, to the extent any such violations occurred, they were the result of failures to act by management of the Bank after the first week of September of 1992, and Respondent denies any responsibility for any such alleged violations.

WHEREFORE, Respondent denies that the Comptroller is entitled to any of the relief prayed for against this Respondent.

DATED: December 23, 1993

/s/ Michael W. McCann
CAPPELLO, FOLEY & BEZEK
831 State Street
Santa Barbara, California 93101
(805) 564-2444
Attorneys for Respondent
William C. Sarsfield

(ER 39)

[Rec. Dec. 28, 1993]

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

AA-EC-93-144

IN THE MATTER OF:
WILLIAM S. SARSFIELD, Former Chairman of the Board
and Current Director;
KENT D. GLOVER, Former President and Current Director;
CHARLES PUCCINELLI, PETER P. BOLLES, THOMAS J.
NEIDERMEYER, SR., and RICHARD C. VAN VALER,
All Former Directors;
JOHN F. HENNING, JR., and NORMAN I. KRUG,
Current Directors, of SEQUOIA NATIONAL BANK,
SAN FRANCISCO, CALIFORNIA

Request for Private Hearing by Respondent
William C. Sarsfield

To: The Comptroller of the Currency of the
United States of America

Respondent William C. Sarsfield hereby requests, pursuant to 12 C.F.R. 19.19, and 12 C.F.R. 19.33, a private hearing with respect to the Notice of Assessment of a Civil Money

Penalty issued on November 20, 1993 by the Comptroller in the above-referenced proceeding.

Respondent makes this request on the following grounds:

1. The pre-trial discovery and hearing in this matter will necessarily involve disclosure of confidential trade secrets of Sequoia National Bank ("the Bank").

2. The pre-trial discovery and hearing in this matter will necessarily require disclosure of personal financial information of individual customers of the Bank whose rights to privacy will be violated by public disclosure.

3. The pre-trial discovery and hearing in the matter will necessarily involve disclosure of disputes and disagreements within the management of the Bank relative to the Order and Notice of Assessment, which disclosure will be injurious to the Bank, as well as the individuals involved.

4. The pre-trial discovery and hearing in the matter may possibly involve disclosure of disagreements and disputes internally to the Office of the Currency of the Comptroller.

DATED: December 23, 1993

/s/ Michael W. McCann
CAPPELLO, FOLEY & BEZEK
Attorneys for Respondent
William C. Sarsfield

[Filed Nov. 20, 1993 (pp. 1-7 only)]

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

AA-EC-93-144

IN THE MATTERS OF:
WILLIAM C. SARSFIELD, FORMER CHAIRMAN OF THE BOARD AND CURRENT DIRECTOR;
KENT D. GLOVER, FORMER PRESIDENT AND CURRENT DIRECTOR;
CHARLES PUCCINELLI, PETER P. BOLLES, THOMAS J. NIEDERMEYER, SR., AND, RICHARD C. VAN VALER, ALL FORMER DIRECTORS;
JOHN F. HENNING, JR. AND NORMAN I. KRUG, CURRENT DIRECTORS, SEQUOIA NATIONAL BANK
SAN FRANCISCO, CALIFORNIA

Notice of Assessment of a Civil Money Penalty

To: William C. Sarsfield, former Chairman of the Board and current Director; Kent D. Glover, Former President and current Director; Charles Puccinelli, Peter P. Bolles, Thomas J. Niedermeyer, Sr., and, Richard C. Van Valer, all former Directors; John F. Henning, Jr. and Norman I. Krug, current Directors, of Sequoia National Bank, San Francisco, California

The Comptroller of the Currency of the United States of America ("Comptroller") hereby assesses civil money penalties against William C. Sarsfield ("Respondent Sarsfield"), Kent D. Glover ("Respondent Glover"), Charles Puccinelli ("Respondent Puccinelli"), Peter P. Bolles ("Respondent Bolles"), Thomas J. Niedermeyer ("Respondent Niedermeyer"), Richard C. Van Valer ("Respondent Van Valer"), John F. Henning ("Respondent Henning"), and Norman I. Krug ("Respondent Krug") (or, collectively "Respondents") pursuant to the provisions of 12 U.S.C. § 1818 (i). These assessments are issued on the basis the hereinafter described violations of a final order issued pursuant to 12 U.S.C. § 1818(b) (hereinafter referred to as the "Order"). All the violations of the Order occurred at Sequoia National Bank, San Francisco, California ("Bank").

After taking into account the size of the financial resources and good faith of the Respondents, the gravity of the violations, the history of previous violations and such other matters as justice may require, as required by 12 U.S.C. § 1818 (i) (2) (G), and after soliciting and giving full consideration to the Respondents' views with respect to these considerations, the Comptroller hereby assesses the following civil money penalties against the following Respondents:

William C. Sarsfield	$15,000
Kent D. Glover	$15,000
Charles Puccinelli	$5,000
Peter B. Bolles	$5,000
Thomas J. Niedermeyer	$5,000
Richard C. Van Valer	$5,000
John F. Henning	$5,000
Norman I. Krug	$5,000

These civil money penalties are payable to the Treasurer of the United States.

These assessments are based on the following:

ARTICLE I

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the

National Bank Act of 1864, as amended, 12 U.S.C. § 1 et seq., and an insured depository institution within the meaning of 12 U.S. C. §§ 1813 (c) and 1818 (I).

(2) The Comptroller is the "appropriate Federal banking agency" within the meaning of 12 U.S.C. §§ 1813 (q) (l) and 1818 (i) (2) (E).

(3) At all times relevant herein, Respondents were directors and/or officers of the Bank and institution-affiliated parties within the meaning of 12 U.S.C. §§ 1818(u) and 1818(i). In these capacities, Respondents were under a statutory and fiduciary duty to supervise the Bank's affairs in accordance with all applicable laws, rules, and regulations.

ARTICLE II

(1) The Bank entered into the Order with the Comptroller on March 4, 1992, and entered into an Amendment regarding the same Order on February 3, 1993. Details of the Bank's violation of the Order are described in the June 30, 1992 Report of Examination ("ROE)" and the December 31, 1992, ROE. Copies of relevant excerpts from the ROE's are attached hereto as Appendix A.

(2) For purposes of this action and as of December 31, 1992, Respondents caused, brought about, participated in, counseled, or aided or abetted the Bank's failure to comply with the following articles of the Order: Articles VI, VII, IX, X, XII, XIII, and XV.

(3) In violation of Articles VI and as of December 31, 1992, the Board failed to immediately increase or maintain the liquidity of the Bank which was sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base; failed to develop and implement a program to improve the Bank's liquidity position within forty-five (45) days of entering into the Order; and, failed to ensure that a liquidity contingency plan was developed within sixty (60) days of entering into the Order.

(4) In violation of Article VII and as of December 31, 1992, the Board failed to adopt and implement a plan, with specific timeframes, to reduce the Bank's reliance on volatile liabilities through the development of alternative funding sources and failed to establish time limitations on the use of volatile liabilities as a funding source within thirty (30) days of entering into the Order.

(ER 38)

(5) In violation of Article IX and as of December 31, 1992, the Board failed to revise its written loan policy within sixty (60) days of entering into the Order.

(6) In violation of Article X and as of December 31, 1992, the Board failed to formulate and ensure implementation of an effective and independent loan review program for the purpose of assuring the timely identification of problem loans in the Bank's loan portfolio. The Bank failed to comply with the provisions of Article X within sixty (60) days of entering into the Order.

(7) In violation of Article XII, contrary to Banking Circle 201 and as of December 31, 1992, the Board failed to establish a program for a maintenance of an adequate Allowance for Loan and Lease Losses.

(8) In violation of Article XIII and as of December 31, 1992, the Board failed to obtain current and satisfactory credit information on all loans lacking such information, including those loans listed in any ROE or in any listings of loans lacking such information provided to Bank management at the conclusion of any examination.

(9) In violation of Article XV, as of December 31, 1992, the Board failed to maintain Tier 1 capital at least equal to eight percent (8%) of risk-weighted assets.

ARTICLE III

(1) As evidenced by the actions of all the Respondents as described in Article II above, Respondents failed to comply with the Order.

WHEREFORE, the Comptroller, through his authorized representative whose hand appears below, hereby assesses the above-described penalty, effective immediately.

TAKE NOTICE, Respondents are hereby afforded the opportunity for a hearing before the Comptroller concerning these assessments, pursuant to 12 U.S.C. § 1818 (i)(2)(H), if a request for such a hearing is made within twenty (20) days of service of this Notice of Assessment ("Notice"). Any request for such a hearing shall be filed with the Office of Financial Institution Adjudication, 1700 G Street, N.W., Washington, D.C., 20552, with the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C., 20219, and served with Javier A. Maymir, Attorney, Enforcement and Compliance Division, Office of the Comptroller of the Currency,

250 E Street, S.W., Washington, D.C., 20219, and such hearing shall be conducted pursuant to 12 C.F.R. Part 19, which requires Respondents to file an answer within twenty (20) days after service of this Notice.

The hearing afforded the Respondents shall be open to the public unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

If Respondents fail to request a hearing within the above twenty (20) day period, this Notice shall constitute a final and unappealable order, pursuant to 12 U.S.C. § 1818 (i) (2) (E) (ii). In addition, if Respondents fail to file an answer to this Notice within twenty (20) days of service, as required by 12 C.F.R. § 19.19, such failure shall constitute a waiver of the right to appear and contest the allegations contained in the Notice, and may cause the Administrative Law Judge to find the facts in this Notice to be as allege, upon which an appropriate order may be issued.

Remittance of this civl money penalty shall be payable to the Treasurer of the United States and delivered to the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219.

PRAYER FOR RELIEF

WHEREFORE, the Comptroller prays for relief in the form of the issuance of a final Order of Assessment directing Respondents Sarsfield and Glover to pay civil money penalties in the amount of fifteen thousand dollars ($15,000) each and Respondents Puccinelli, Bolles, Niedermeyer, Van Valer, Henning and Krug to pay civil money penalties in the amount of five thousand dollars ($5,000) each.

WITNESS, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 20th day of November, 1993.

/s/ Stephen R. Steinbrink
STEPHEN R. STEINBRINK
Senior Deputy Controller
Bank Supervision Operations

OCC EXHIBIT 158

MEMORANDUM

July 9, 1991

TO: WCS; Board of Directors

FR: JFH

RE: Board Inquiries; special meeting - July 9, 1991

1. Introduction: within the last sixty days from the date above, certain events have allegedly occurred which have raised certain concerns with the operations of SNB under the applicable regulatory scheme of National Banking Act and other relevant legislation. These events consist of certain statements, actions or policy decisions attributed to you and Kent Glover respecting SNB's operations. While all of these allegations may be baseless or consist of a misreading of the apparent facts, under the strict fiduciary standards imposed upon the Board of Directors under 12 USC §93, inter alia, the Board is obliged to investigate any claim or suspicion that a regulatory or statutory violation has occurred. Based on the review of the below described items in your meeting with me on July 5, 1991, it would appear that a clarification of these events from your

standpoint is available and would go a long way toward resolving the concerns posed by the facts as presently alleged. As you can well understand, to the extent that some of these claims involve SNB employee sources, their anonymity must be preserved, to the extent possible, under the anti-retaliation/whistle-blower legislation of FIRRE, (12 USC § 1831j) and Title VII (42 USC § 2000e-3(a)).

In addition to these regulatory concerns, the Board also wishes to informally discuss and review management's ideas and concepts on the future direction of the bank and the Board's concerns over its growth and development.

For purposes of discussion this date, therefore, the Board's concerns, as I can best determine them, are outlined below followed by a possible course of action if the factual allegations are determined by all to be true:

2. Concerns and Inquiries: The Board is concerned over the regulatory ramifications of certain alleged factual and policy situations which have arisen recently that cause it to inquire as to the following items:

(a) Personnel:

(1) whether or not an automobile, presently owned and registered to SNB, in addition to that presently provided to WCS, is being operated on a daily commute basis by Molly Sarsfield and whether the garage fees and insurance on this second car are being paid by SNB? How long has this condition prevailed? Was the automobile sold or transferred to Molly Sarsfield? (Mismanagement of Assets)

Action/Remedy: Effect transfer of registration, track sale proceeds?

(2) Whether or not Matthew Sarsfield was hired, without prior banking experience, as a teller at a monthly salary approximately three hundred dollars more than female tellers with prior banking experience, such as Yvonne Petrunin? Whether or not, when the issue of this apparent discrimination was brought to the attention of WCS by a senior officer, WCS dismissed this complaint and advised said person that "the only problem the other employees of this bank have is not being born with the last name of its president," or words to this effect. Is Matthew Sarsfield's job description as teller unique? Can his job duties be described as substantially the same as the female tellers? (Title VII, 42 USC § 2000e; Equal Pay Act, 29 USC §206)

Action/Remedy: Provide individual job descriptions, equalize pay, provide Matthew Sarsfield and other employees with overtime pay?

(3) Whether or not WCS advised a senior officer within the last thirty days that it was his wish that it be determined which of the bank's employees could be described as "loyal" to WCS, and which of the bank's employees could be described as "enemies," and that the enemies be fired and thrown out of the bank, or words to this effect? Was this statement meant as a joke, or made in a fit of pique? (Wrongful discharge; FIRRE Retaliation, 12 USC § 1831j)

Action/Remedy: Apologize, disavow, post equal treatment notice if necessary?

(4) Whether or not WCS used the secretarial services of Kathleen Long during the normal business hours of SNB for the unrelated business purpose of assisting WCS in the conduct of his consulting/expert witness business, for which services Ms. Long was paid an additional $400-$500 a month? For how long has this, or any similar arrangement, been in place? Was a like amount of $400-$500 deducted from Ms. Long's bank salary, or was Ms. Long also paid for the time devoted to these secretarial services by the bank? What is the

normal secretarial salary for a bank secretary? (Mismanagement of Assets)

Action/Remedy: Reimbursement of the $400-$550 in bank time devoted each month by Ms. Long to WCS unrelated business; confirm position pay?

(b) Management:

(1) Whether or not it was represented to any regulatory agency that Kent Glover would serve and function as the de facto CEO of SNB, while WCS remained and/or assumed duties restricted to the Board of Directors? Was a table of organization provided any regulatory agency outlining the respective duties of Kent Glover and WCS? (Filing misrepresentations - personnel; 12 CFR 5.20(2)(ii),(4)(11); 18 USC § 1001)

Action/Remedy: Provide documentation of thrift and NB applications, filings with OCC re table of organization; amend filings if necessary?

(2) Whether or not there exists any legal impediment, or regulatory restriction pertaining to the prior employment of WCS at Commercial Bank, which would prevent WRS's assumption of CEO duties as president of SNB?

Is the present employment or exercise of banking duties by WCS consistent with such prior restrictions to the extent that they exist?

Action/Remedy: Amend prior filings if necessary; secure OCC approval for WCS to assume CEO responsibilities if necessary?

(3) Whether or not there existed, at any time within the last four years, an understanding as between WCS and Kent Glover that his physical attendance at the premises of SNB would be effectively excused, or not required, for at least three weeks of every month? What has been the attendance pattern of Kent Glover at SNB for the last four years? Is it contended that the Board had knowledge of such an arrangement and so approved it? (International Bank v. Bennet, 513 So.2d 1294 (Fla. App. 1987) [payment for unrendered services])

Action/Remedy: Prepare written job description; require salary adjustment and reimbursement if necessary; redefine functions of executive personnel?

(4) Whether or not there existed, at any time within the last four years, an undertanding between WCS and the Board that WCS's contract of employment was based on "performance alone" without reference to full time attendance

to the affairs of SNB during normal banking hours? Was such an understanding, if it existed, a formal or informal understanding with the Board? Was this understanding communicated to the stockholders or any regulatory agency?

Action/Remedy: Prepare written job description; prepare employment contract; redefine functions of executive personnel?

(5) Whether or not there existed, at any time within the last four years, an understanding as between WCS and the Board that WCS was authorized to conduct an unrelated consulting/expert witness business during normal banking hours which resulted in an average annual personal income between $150,000-$200,000? What is the "principal occupation and employment" of WCS for purposes of the proxy statements? Do any of the clients of WCS's consulting/expert witness business pose a conflict of interest in the operations or policies of SNB? Did the past conduct of such an unrelated business deter any efforts by WCS from selling SNB to another financial institution? Is the provision of consulting/expert witness services to a third party considered by WCS as a corporate opportunity or asset for which the bank could charge to a third party? (Garner v. Pearson, 545 F.Supp. 549 (MD Fla. 1982) [corporate opportunity must be shared with corporation])

Action/Remedy: prepare written job description; require salary adjustment or curtailment of consulting/expert witness employment; redefine functions of executive personnel; require disclosure of client list and hourly billings for last four years to determine extent of "outside" employment; determine corporate opportunity status?

(6) Whether or not WCS will curtail or abstain from outside employment while employed in an executive position with SNB? If so, under what circumstances?

Action/Remedy: Prepare written contract of employment specifically referencing outside employment; adopt conflict of interest-policy?

(7) Whether or not negotiations have been conducted with the Russian government, or its agents, for the hiring of WCS and/or Kent Glover to serve as consultants to that government? What are the terms of compensation proposed for such services, and will SNB be the recipient of such services? Do such services require regulatory approval and/or is there any potential conflict posed to SNB by the performance of such services. Is the provision this consulting/expert witness service considered by WCS as a corporate opportunity or asset for which the bank could charge

the Russian government? (Foreign banks - 12 USC §§ 3101 et seq.)

Action/Remedy: Require the preparation of a contract for consulting/expert witness services as between SNB and the Russian government; seek regulatory review?

(c) Regulatory Agency Interface:

(1) Call Reports: Whether or not a continuing dispute exists between WCS and a senior bank officer regarding the completion of call reports concerning the bank's financial condition as it pertains to the "booking" of loans? Whether or not a senior bank officer has repeatedly refused to sign off on call reports where home loans, vice equity loans, have not been funded and interest accrued thereon? Whether WCS has forced a senior bank officer to sign off such call reports despite the foregoing objections? What is the applicable regulatory rule respecting the "booking" of home loans? (False entries - 18 USC §1005)

Action/Remedy: Determine GAAP/RAP rule and amend reports if necessary?

(2) CRA Plan: Whether or not the Examiners proposed to rate our CRA (Community Reinvestment Act) Plan unsatisfactory during a recent examination on the grounds, inter

alia, that SNB had failed to demonstrate the investment of a single dollar in its "local community" of San Francisco? What would have been the economic consequences of an unsatisfactory rating to SNB? Which executive officer is primarily responsible for the compliance requirements pertaining to SNB's CRA Plan? Should the Board have been more involved in the review of the CRA Plan? (12 USC §§ 2901 et seq.)

Action/Remedy: Reassign CRA responsibilities, require new CRA proposal for Board approval?

(3) Liquidity: Whether or not SNB's failure to maintain "sufficient" liquidity, without reliance on the Federal Home Loan Bank equity line, creates any regulatory risks? Did the Examiners criticize SNB's reliance upon "hot money" deposits in the latest examination? Which executive officer is primarily responsible for maintaining an appropriate liquidity ratio? Why hasn't a program been developed for increasing core deposits in view of Board's historical requests? Has the lack of liquidity or a core deposit base deterred prospective purchasers? Could it affect our capital ratio?
(12 CFR 3.10)

Action/remedy: Develop core deposit program?

(d) Board of Directors:

(1) Document Requests: Whether or not Director Van Valer has been denied an opportunity to inspect SNB's shareholder list by WCS; and whether or not on July 5, 1991, I was inappropriately denied copies of SNB's corporate by-laws and public filings for thrift and NB charters by WCS without submitting a written request for same and providing a justification for request. (12 USC § 71)

Action/remedy: Misunderstanding of requests, clarification of policy, apology?

(2) Telephone Vote Policy: Whether or not it is appropriate, in view of the lack of by-law provision, to continue the practice of recording "telephone votes" as effective votes as if the Director involved was "present" at the meeting and reflecting in the minutes that such Director was "present"? (Letter No. 308; 12 USC § 73)

Action/remedy: Terminate practice, discuss amendment of by-laws?

(3) Lack of Committee Meetings: Whether or not SNB is delinquent in not implementing "Loan," "Investment," and "Examining" Committees provided under By-laws (Art. IV)? (12 USC § 71)

Action/remedy: Schedule committee meetings with agenda prepared by management at earliest opportunity?

(4) Intemperate Statements: Whether or not the following statements were made by WCS ("you") to me in jest, out of pique or with malicious intent?

1. That on June 28, 1991, in the presence of Kent Glover, you advised me that I was "fired" as a Director of SNB for my failure to previously warn you of the questions posed by the Board to you on the prior Board Meeting of June 26, 1991, or words to this effect;

2. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, you advised me that if I was willing to resign as a Director of SNB, you would retain me as Counsel to SNB for a monthly retainer of $500, for which fee, as you advised another Director, I would not be expected to render services, or words to this effect;

3. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover you presented me with a written proposal, typed by Kathleen Long, providing for my resignation and retention as Counsel.

4. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, you advised me that my fiduciary duty was owed only to two of the bank's shareholders which were identified as you and Kent Glover, or words to this effect;

5. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, you advised me that I, as Counsel to the bank, had an obligation to you to keep you advised of the plans, meetings and intentions of the other Directors as they affected the operations of the bank, or words to this effect;

6. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, you advised me that the Board had no right whatsoever to question your administration of the bank so long as the operating results were positive, or words to this effect;

7. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, you advised me that you had no obligation to respond to inquiries from the Board unless you determined that the inquiries were coming from so-called "good guys," or words to this effect;

8. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, in connection with your recent offer to buy 30,000 shares of SNB stock at $4.24/share, discussed below, you offered to procure an interest only loan to enable me to participate in such a purchase with you if I would only consider myself a "good guy" and side with you and Kent, or words to this effect;

9. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, you advised me that you and Kent had devised a close-down plan that would bring the bank down around your shoulders in the event that your control was threatened and that such a plan was designed to thwart the proposed take over of the bank by former Director Eagan, or words to this effect;

10. That on June 28, 1991, between 12:30-1:30 p.m., in the presence of Kent Glover, you advised me that I had until 3:00 p.m. that day to resign or I would be "through;" and that I was to telephone you at 3:00 p.m. for that purpose, or words to this effect;

11. That on June 28, 1991, at 3:00 p.m. after my statement to you that I did not intend to resign, you advised me

that you had no intent of running the bank with the consensus of the Board and that all future decisions would be unilaterally made by you, or words to this effect;

12. That on June 28, 1991, at 3:00 p.m., you advised me that you were offering me my last chance to side with the "good guys" against the Board and again asked me to resign from the Board, or words to this effect;

13. That on June 28, 1991, at 3:00 p.m., you advised me that if the Board persisted in its resistance to you, you would "come back like a resurrected Hitler and this time it would be no more nice guy," or words to this effect;

14. That on June 28, 1991, at 3:00 p.m., you again advised me that you were capable of bringing the bank down around your shoulders if pushed too hard by the board, or words to this effect;

15. That on June 30, 1991, at 10:00 a.m., you telephoned me at my home and advised me that I was again fired both as Counsel and as a Director of SNB and that I would have nothing more to do with the bank, or words to this effect;

16. That on June 30, 1991, at 10:00 a.m., you again advised me that if I was willing to walk away, I would be retained as Counsel for $500 per month, or words to this effect;

and,

17. That on June 30, 1991, at 10:00 a.m., you advised me that if I continued to refuse to resign as Counsel or as a Director, you intended to put my brother, Thomas Henning, on the telephone at the bank on Monday morning, July 1, 1991, for the purpose of having him request my resignation "for the good of the bank," or words to this effect. (12 USC §71)

Action/remedy: Apologize for remarks, explain that they were said in pique or jest?

(e) WCS Proposed Stock Purchase: Concern has arisen over a purported offer by WCS to purchase 30,000 shares through Hofer and Arnett for the price of $4.25. This information was allegedly forwarded by Hofer and Arnett to First Interstate, at that bank's request, and had the effect of causing First Interstate to require Director Bray to recollateralize his loan because of the drop in the value of SNB stock allegedly caused by WCS's bid. The question is posed as to what are the circumstances of this offer and the propriety of a SNB executive officer/insider publicly bidding SNB stock at

the low end of the market? In connection with the apparent offer to me and other Directors by WCS to procure for them interest only loans to take down this stock at $4.25, would such a proposal appear an inappropriate attempt to lower the market for SNB stock in order to increase the leverage of the bank's officers participating in such a scheme? (SEC §10(b); Rule 10b-5 -disclose or abstain; obtaining loan on terms more favorable than those afforded other borrowers from corresponding bank, 11 USC § 375a.)

Action/remedy: Explain circumstances, propose policy on public bidding for SNB shares; clarify intent/ policy regarding procurement of interest only loans for Directors?

(f) Future Direction and Development: Assuming that there are no realistic prospects for a sale of the institution at an acceptable price, concerns have arisen about the future direction and development of SNB which require that the following items, inter alia, be addressed:

(1) Employment of a Full time Executive Officer: In view of the apparent fact that there does not appear to be a CEO dedicated to the bank's needs on a full time basis, should some thought be given to the curtailment of the salaries of WCS and Kent Glover to support the employment of a full time

executive officer to administer the bank's affairs? What are the relative advantages and disadvantages of such a proposal?

(2) SNB's Financial Condition: What is SNB's financial condition by the CAMEL rating? While the bank's growth and earnings can be manipulated by lowering lending standards, increasing CD rates, and selling off the loan portfolio, would such a possible approach be a legitimate means of growth that will eventually attract a purchaser, enable the bank to pay out dividends, or increase the value and market for the bank's shares?

(3) Compensation Package: Should the issue of compensation, health and retirement benefits be reviewed for both officers and employees of SNB to bring them up to peer level for comparably sized banks?

(4) Performance Contract: What are the relative advantages to the bank, the shareholders, and the affected officers of conditioning compensation on a performance standard in order to increase the value of the bank? What is an appropriate performance standard?

(5) Staffing: Are we understaffed to provide normal banking services for an institution of our size? Is the establishment of a Compliance Committee really necessary after all?

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OCC EXHIBIT 159

July 1, 1991

MEMO TO FILE

RE: Sequoia National Bank (Certif. No. 26907; Bank No. 061486; Charter No. 21337); William S. Sarsfield; NBA/Fiduciary Violations.

1. **Financial Status Comments:** With the exception of its liquidity ratio, SNB meets all peer group thresholds. Its counter statement reflects $40M in assets. A review of all call reports confirms diligent, consistent adherence to GAP practice, all figures being true and current accounts of the assets and liabilities of the bank's operations. With respect to the bank's liquidity ratio, it is SNB's present plan to expand its Federal Home Loan credit line to 7M to meet its current liquidity shortfall perceived to be at a self-deduced 2.43% versus 20% goal. SNB's asset base consists of $33M in interest sensitive CDs which constitute 75% of total assets. Its loan portfolio is strong with a well secured loan base of conservatively appraised real property.

No financial misfeasance is noted or suggested.

2. **Current Board Dissension:** Within the last sixty days from date above, certain events have allegedly occurred which have raised certain concerns with the operations of SNB under the applicable regulatory scheme of the National Banking Act and other relevant legislation. These events consist of certain statements and actions attributed to SNB's Chairman of the Board, William S. Sarsfield, and SNB's President, Kent Glover. The following chronological recitation of relevant events is presented as the context of those alleged statutory violations set out infra at paragraph 4, to wit:

(1) SNB Board Meeting of May 29, 1991: An examination of the Board's minutes and of the Directors in attendance indicates that the issue of liquidity was addressed. Director Van Valer urged that SNB adopt a program to develop core deposits, a continuing request that he has apparently made for the last three years with the support of the Board and SNB's V.P. Beverly Williams. In response, Sarsfield reported that SNB's lines of credit with First Interstate and Wells Fargo had been terminated the prior week creating a liquidity squeeze which he intended to resolve by reliance on SNB's equity line with the FHLB which he hoped to expand to $7M which would resolve the liquidity problem. Sarsfield made no response to additional questioning by Van Valer on the issue of developing a core deposit program. At the close

of the agenda, Pres. Glover advised the Board that he wished at that time to move to increase the salary of Chairman Sarsfield from $54,800 to $78,800 effective June 1, 1991. This amount did not include the auto allowance and insurance package already provided Sarsfield. When Director Henning asked Pres. Glover why an increase of salary was not proposed for his position, he responded that he desired no increase in salary. Pres. Glover then went on to say that he believed that Chairman Sarsfield deserved a raise because he was increase in salary. Pres. Glover then went on to say that he believed that Chairman Sarsfield deserved a raise because he was now willing to "put in full time to the job." When pressed by the Directors what was meant by that comment, Chairman Sarsfield stated that he had been engaging in expert witness consultation over the past years which had brought him an annual income of approximately $220K a year. Despite that fact, he felt he could now devote full time to his position with the bank for which he felt he was entitled to compensation on par with peer banks with equal performance results. The Board adopted the pay raise for Chairman Sarsfield unanimously.

(2) Director Discussions, May 30 - June 7, 1991:

Subsequent to the May 29, 1991, certain discussions were had amongst the Directors on the subject of outside consulting by Chairman Sarsfield. While the matter had never been formally addressed by the Board or Sarsfield, the Directors opined that while they had seen various legal documents on his desk or heard reference to his consulting activities, all assumed that it did not amount to more than $5-8K a year. There was some concern expressed by certain Directors that at a rate of $100.00 per hour, this would amount to 2000 hours annually devoted to outside consulting. On or about June 4, 1991, Director Henning expressed his surprise to Chairman Sarsfield about the amount of consulting reported to the Board. Chairman Sarsfield stated that the whole Board has known about the matter for years. There appears to be no evidence that any Director knew about this matter prior to May 29, 1991.

(3) Director Discussions, June 8 - 26, 1991: In the ensuing weeks prior to the Board meeting of June 26, 1991, Directors Bray, Henning, Krug and Van Valer had multiple conversations regarding the operations of SNB and Messrs. Sarsfield and Glover; and, based on their inquiries and various rumors, allegations and suspicions, came to the conclusion that there existed good cause to pursue claims that:

(a) Sarsfield and Glover had caused the organization of Sequoia Savings Bank and its successor, SNB, based on certain representations to regulatory agencies that Glover would be and continue as the CEO/President of these organizations while Sarsfield's efforts would be limited to the holding company, in the case of the thrift organization, and to the role of Chairman of the Board in the later case of SNB. This representation was made necessary, allegedly; because Sarsfield had been "banned" from bank administration under a prior OCC supervisory agreement with Commercial Bank which, allegedly, resulted in his being forcefully being removed from the premises of Commercial Bank by private security personnel. Based on this prior experience, Sarsfield was of the opinion that the OCC would not allow him to operate as a CEO of Sequoia.

(b) In return for allowing Glover's assistance with processing the thrift and SNB applications, Glover exacted an arrangement, allegedly, whereby he would abdicate de facto CEO duties in favor of Sarsfield and retire to Carmel. His duties would be limited to attending Board meetings, dealing with the regulators whenever they were on the premises, checking the call reports and procuring CD's through prior professional associations. Glover was at

all times, in this regard, represented to be a "regulator" who knew everyone and could keep the regulators "off our backs" according to Sarsfield. The net result of this arrangement was that for the last three to five years, Glover has been present on SNB's premises approximately three days of each month, with the remaining time spent at his home in Carmel. These allegations have been largely supported by SNB staff. For these "duties" Glover has received an annual salary of $50,000 plus insurance. When pressed by different Directors as to what Glover was doing, Sarsfield responded variously that - Glover was retired effectively because all the male members in his family died an early death and he didn't want to die at his desk; Glover wasn't working anymore and the salary being paid him was to meet his loan payments on the stock that he had purchased in SNB; Glover and Sarsfield were an inseparable team that was producing the income results desired and no question could be put to them regarding who showed up at work.

(c) None of the Board Committees were effectively functioning anymore. Sarsfield had failed to use the services of the Loan Committee for the last two years and had suspended any attempt to review loan applications with the Committee as he had previously done. All loan applications were reviewed and approved by him

personally. The Board's Executive Committee, which was formed and designed to build core deposits and expand business opportunities, had not met at all for the past four years despite repeated requests by Board members for such meetings. The Audit Committee was not called to review the financial reports or meet with the auditors as was the customary practice in the first years of operation, reducing the Audit Committee to calling the auditors individually to assess the status and contents of various reports.

(d) Various reports had been received by Directors from James Eagan a former Director, and other stockholders that SNMB was run on a daily basis, albeit very successfully, solely due to the efforts of Vice Presidents Beverly Williams and Eva Silva. The bulk of the day was spent by Sarsfield on his consulting business for which he employed the use of SNB employee Katherine Long and used the banks mailing and messenger service in the operation of his consulting business.

(e) Sarsfield had hired his son, Matthew Sarsfield, as a teller. Matthew Sarsfield had no prior banking experience. Similarly; Sarsfield hired his daughter, Molly Sarsfield, as SNB's Loan Administrator. Molly Sarsfield had no prior banking experience.

Thereafter certain complaints were made by co-employees that Molly Sarsfield was not coming in or having her work transferred to other employees. It was also alleged that Matthew Sarsfield was being paid in excess of that salary paid to female tellers with prior banking experience, viz., Yvonne Petrunin. When these complaints were brought to Sarsfield's attention by V.P. Beverly Williams, Sarsfield advised Williams that the other employees of the bank "had not been blessed by being born with the same last name of its president, and so they could lump it."

(f) Sarsfield had begun negotiations with the Russian Government within the last month to secure his hiring and that of Glover as consultants to the Russian Government on banking matters, which consultation would require their travel to Russia. It was also alleged that Sarsfield had a consulting agreement with the Indonesian government to conduct banking seminars for an annual two week period in Jakarta. There was also speculation that Sarsfield's expert witness work was on behalf of various plaintiff parties suing National Banks, which had so annoyed the banking community that it resulted in the termination of SNB's equity lines at First Interstate and Wells Fargo. Sarsfield had been quoted as stating that he had the expert witness business sewed up nationally since he was the only bank

president that could sit as an expert witness; that he could not allow the bank to get into any trouble with the regulators since it would be the end of his expert witness work; and that he was earning in excess of three hundred thousand dollars a year as an expert witness. It was also commonly admitted among Directors that Sarsfield had a strong tendency to exaggerate matters involving himself.

(g) Sarsfield was opposed to any program to build core deposits because it was easier to meet liquidity through reliance on equity lines of corresponding banks or the FHLB. Moreover, as he constantly bragged, he controlled the core depositors since they were former clients and/or acquaintances from Commercial Bank; and, if he was ever threatened by a takeover or the regulators, he and Kent could "collapse the bank around them like Sampson." Sarsfield apparently made numerous other statements in this regard to the effect that he would never meet liquidity requirements through recapitalization since this would dilute his interest and he would rather have the bank collapse than have his interest diluted.

(h) Various reports and allegations were made that Victor Granholm, who served as the Board's Vice Chairman, had also served as "window dressing" to get SNB's thrift and NB charters

through; that he had no real function at the bank, that he had been employed full time at another bank on the Peninsula; that his only duty was to show up at the monthly Board meetings; and that he was given various consulting assignments by Sarsfield in order to allow him to pay his bank loan on his SNB stock.

(i) A consensus was reached amongst Directors Bray, Henning, Krug and Van Valer that they were confronted with a very difficult at delicate situation that required immediate remedy. It was their shared conclusion that neither Sarsfield nor Glover were taking care of business and that a "professional banker" had to be brought in on a permanent basis while the Board investigated the truth of the foregoing allegations.

(j) A consensus was also reached amongst Directors Bray, Henning, Krug and Van Valer that dealing with Sarsfield would be quite difficult. At Sarsfield's initiation, Director Henning's brother, Thomas R. Henning, was requested to apply for employment with SNB and over the years had risen to his current position of Assistant Vice president. Director Henning's family had been connected with Sarsfield for many years and another brother, Daniel Henning, had been formerly employed with Sarsfield at the Commercial Bank. Director

Bray's daughter, Florence Bray, was also employed at SNB; and for these reasons there was some anxiety about the effect their inquiries might have in the matter of their family members. Notwithstanding, it was mutually agreed that the foregoing matters would all be brought up at the next Board meeting on June 26, 1991, and that a separate meeting in executive session would be called to investigate these matters in depth without the presence of bank staff.

(3) SNB Board Meeting of June 26, 1991: In moving through the regular agenda for the Board meeting, the issue of SNB's liquidity was again raised and debated by Sarsfield and the Board. With Van Valer again complaining about the lack of a program to develop core deposits, Sarsfield informed the board that while the issue had reached a critical stage, he had together with the FHLB worked out a perfect solution which would solve all our problems and make us a lot of money at the same time. Based on his relationship with the FHLB, and the fact that the FHLB wanted to use SNB as an example to attract other smaller banks to its membership, the FHLB would increase our equity line to $7M or more at a favorable cost of 1/8 of 1% of commitment. When asked by Director Van Valer as to whether this line was "guaranteed," Sarsfield replied that the FHLB would give him its personal guarantee that they wouldn't "jerk" the line. When

Director Bray asked whether this would meet the OCC's liquidity requirements, Sarsfield said that the OCC wouldn't have a choice; that he and the FHLB had decided that this equity line arrangement would be very attractive to potential FHLB members and that in cooperation with the FHLB he, Sarsfield, would author a professional article on the advantages of the FHLB's line, which article would force the OCC into cooperation. According to Sarsfield, the FHLB had told him that this had worked on prior occasions. When Director Bray observed that this was a dangerous tactic to pursue vis-a-vis the OCC, Sarsfield replied that SNB had no choice and that he would decide the matter. Bray replied that he would rather see us go for core deposits than go down such a risky path. Sarsfield then declined to discuss the matter further.

Matters came to a head, however, at item 7 of the agenda, involving the "Review, Compliance/Operations Committee." As described by Sarsfield and Glover, this was another committee that would have to be set up "to get the regulators off our backs." It was designed to assure that we were meeting all our regulatory obligations. According to Sarsfield, the Committee was to be headed up by Vice-Chairman Granholm who would be paid a monthly retainer of approximately $1,800. When Director Henning observed that it had always been his impression that compliance was the chief function of

Kent Glover and the primary justification for his employment, a rather heated exchange ensued. During this exchange, Directors Bray, Henning, Krug and Van Valer voiced their opinion that there appeared to be real problems in defining the roles of Sarsfield and Glover, that there were a questions about Glover's attendance, Sarsfield's consulting business, the bank's direction, and other critical problems that the Directors wanted to address in a special Directors meeting. It was also raised by Directors Henning and Bray that they believed that a "key man" policy should be taken out on Sarsfield since he effectively had become the bank; and, for this same reason, Director Bray felt that serious thought should be given to hiring a "full time professional banker" to back up Sarsfield. Sarsfield refused to respond to any of the Directors' statements and became visible angry and demanded that the only Board business was the approval of his Compliance Committee and hiring of Granholm. After several Directors made statements to the effect that they intended to look at the Committee after two months of operation, Director Van Valer stated that he would recommend approval of the Committee solely on the condition that Sarsfield agreed to meet with the Directors at a special meeting to be held within the next two weeks to respond to their collective concerns about the bank and the roles of Sarsfield and Glover. Sarsfield agreed and the Committee was approved and the meeting adjourned.

(4) Henning Lunch, June 28, 1991: At 11:30 a.m. on Friday June 28, 1991, Sarsfield left a telephone message with Henning's secretary that he and Glover were taking Henning to lunch at 12:00 and that he should expect to be ready. At 11:45 a.m., Director Bray phoned Henning that a commercial loan for $100,000 at First Interstate had been called that morning. When asked the reason for calling the loan, First Interstate had informed Bray that the market maker in SNB stock, a Philip Economopolous, had informed the bank that the stock had collapsed because Sarsfield had put out a bid for 11,000 shares at $4.25 when the stock had previously been trading at $6.00. Bray was quite upset about the matter and was of the opinion that Sarsfield had somehow breached his fiduciary duty to the stock holders by representing publicly that the stock had a par value of $10.00 while private attempting to deflate its value by bidding $4.25. Director Henning advised Bray that Sarsfield and Glover were meeting him for lunch and that he would bring up the matter.

On sitting down to lunch at approximately 12:15, Sarsfield went into a tirade about how there a cabal out to get him and destroy him and that Henning, as the bank's attorney, had failed to warn him and prevent what appeared to be an attack on his administration of the bank. Sarsfield went on to say that the Board had no right or reason to question his administration as long as the performance of the bank was positive. Sarsfield stated further that if the Board would be quiet, he could guarantee a $1 a share dividend by hears end. These remarks concluded with the question posed by Sarsfield to Henning as to whether he was going to be on Sarsfield and Glover's side against the "bad guys" or join the bad guys. When Henning replied that he felt he had a fiduciary duty to the Board and all its stockholders to determine the propriety of management's actions, Sarsfield replied that as SNB's attorney he owned his duty solely and only to the two major stockholders, viz., Sarsfield and Glover. Henning then proceeded to raise the questions regarding his consulting business and Glover's residence in Carmel, and particularly the question of leading the regulators to believe that Glover was the President of SNB when in fact Sarsfield had apparently always operated exclusively in this position while Glover resided in Carmel. Director Henning stated that he had a problem telling the regulators that they were hiring an individual, for instance, as a teller for approval of the OCC's certificate, and then later

transferring that individual to CEO. Henning observed that it could well be argued that they had been carrying on an elaborate masquerade for the past years and that Sarsfield was driving the bank without a license. Sarsfield advised Henning that it was none of his business what Kent and he did as long as the performance was good. Sarsfiled further volunteered that he paid his secretary at the bank, Katherine Long, $400-$500 a month to work on his consulting business, but no deduction was made from her salary from the bank.

When Henning addressed the recent complaint of Director Bray regarding the low stock price bid, Sarsfield replied that the bid was not for 11,000 shares but for 30,000 shares. Sarsfield then proposed that if Henning would consider himself one of the "good guys," he, Sarsfield, would procure for Henning an interest only loan to share in the purchase of the 30,000 shares. Henning desisted and specifically asked Glover whether the allegation concerning his residence inn Carmel and effective absence from the Bank were true; but, Glover merely looked down at his plate and said nothing whatsoever. Sarsfield then repeated that he and Kent were a team, that the Board could not have one without the other, that Occ could care less as long as the performance was good. When Henning stated that he felt the Board had a right to inquire into these matters, Sarsfield stated categorically that he would

never respond to the Board, that he felt he should only answer to "good guys." Sarsfield then demanded that Henning recount all meetings and statements from all employees and Directors that had occurred in the last month. When Henning stated that this was the very purpose of the special Board meeting that had been promised, Sarsfield then stated that he and Kent had concluded that he, Henning, had a conflict of interest and could no longer server as a Director. Sarsfield then produced a previously typed letter of resignation for Henning to sign with the advice that he (Sarsfield) and Glover were not leaving the lunch table until Henning had signed the document. Henning replied that he would give the matter due consideration after the special meeting, to which Sarsfield replied that there would never be such a meeting. Sarsfield then proceeded to indicate to Henning that the resignation was merely from the Board and that Sarsfield intended to continue Henning on as attorney for a retainer of $500 a month indefinitely as long as he walked away from this. At this juncture, Glover made the only statement during the entire one and a half hour lunch to the effect that their dispute with Henning would not affect the situation of his brother Tom as Assistant Vice-President. Sarsfield closed the lunch at approximately 1:50 p.m. with the statement that Henning's problems with the bank would case to exist after 3:00 p.m. and that he expected Henning to reconsider his decision and phone him before that time or

it would be all over for Henning.

(5) Henning Phone Call, June 28, 1991: Director Henning proceeded after his luncheon meeting to meet with Director Krug who had lunched that day with Director Bray. Henning reported the statements made by Sarsfield and Glover at lunch and Krug confirmed that Bray was quite troubled with the direction of the bank under Sarsfield and there apparently had been an ongoing breach of Sarsfield's fiduciary duty in the matter and that we had to get a real "pro" in to back up Sarsfield. It was also emphasized that Sarsfield's reaction indicated that there may be more amiss than was suspected. Krug advised Henning that Sarsfield and Glover had made an appointment to see him at 4:15 that afternoon. It was then agreed that Henning would phone Sarsfield from Krug's office and confirm that he had no intention of resigning as counsel or Director.

Henning called Sarsfield from Krug's office and confirmed to Sarsfield that he had no intention of changing his mind and advised Sarsfield that all these matters could be discussed at the special meeting. Sarsfield replied that he was now offering Henning his last chance to get on the side of the "good guys;" that Sarsfield wanted Henning to side with him and Kent Glover and accompany them to a

meeting with Director Krug and help get Krug in line. Henning stated that he would attend such a meeting if it would help, but that he had no intention of "strong-arming" Krug. Sarsfield then pursued a line of personal invective that went on for approximately twenty minutes during which he emphasized again his ability as Sampson to bring the bank down around him if the Board persisted in questioning him and stated that he was now "the resurrected Hitler" who had come back and was "no longer going to be the nice guy" with the Board. He further stated that he would thereafter run the bank as he unilaterally saw fit since there was no room for consensus nor did he seek to have same. On this note Sarsfield ended the telephone conversation.

(6) Krug Meeting, June 28, 1991: Director Krug met with Sarsfield and Glover at 4:15 p.m., June 28, 1991. As stated by Sarsfield to Krug, Director Bray had mounted a personal rebellion against his administration of the bank and was attempting to seduce the other Directors to follow him in " getting Sarsfield." Sarsfield informed Krug that he had learned that he and Bray had lunched together and demanded to know what had been discussed. Krug informed Sarsfield that he hoped to be a peacemaker in the process but that he and Bray and the others had invested over a half million dollars in the bank and were now concerned over its operation and that the Board had every

right to compel Sarsfield to attend a special meeting to discuss various allegations regarding his, Sarsfield's conduct. Sarsfield then stated that it was imperative to get Henning to walk away from this situation and informed Krug that he, Sarsfield, had offered Henning $500 a month to resign as a Director. The rest of the conversation degenerated into personal attacks on the various Directors who were out to get him, Sarsfield, and a closing remark that he would not meet with the Directors.

(7) Bray Phone Call, June 29, 1991: Sarsfield telephoned Director Bray at approximately 2:00 p.m. on Saturday, June 29, 1991. The call consisted of various rambling statements by Sarsfield that he was not going to let the Directors run the Bank and that everyone was out to get him. Sarsfield then proceeded to inform Bray that he believed that the continued employment of Bray's daughter, Florence Bray, might be viewed by him as a disservice to the bank if the Directors continued in their opposing ways to his, Sarsfield's administration of the bank.

(8) Henning Phone Call, June 30, 1991: Sarsfield telephoned Director Henning at 10:00 a.m., Sunday, June 29, 1991, and informed him that he was "fired" as both Director and counsel to the

bank and that he would have nothing to do with the bank thereafter. When Director Henning reminded Sarsfield that he had been elected by to stockholders and hired by vote of the Board, Sarsfield stated again that it was his bank and he would do what he wanted. Sarsfield then again reminded that he was willing to continue Henning as counsel for $500 a month if he would walk away. When Henning responded that he felt that would be a breach of his fiduciary duty to the stockholders, Sarsfield replied that he intended to put Henning's brother, Tom, on the phone Monday and have his brother Tom request his resignation for the good of the bank. On this note, Sarsfield terminated the call.

(9) Krug Phone Call, June 30, 1991: At approximately 10:30 a.m., Sunday, June 29, 1991, Sarsfield phoned Krug to report that Henning would not accept the deal. When Krug informed Sarsfield that it had every appearance of a bribe and a misappropriation of that position. Sarsfield then proceeded to ramble on about all his enemies; however, when interrupted by Krug who pressed for a date for a special Board meeting, Sarsfield relented and agreed that the Board would meet on July 9, 1991. This conversation was terminated and Krug telephoned Director Henning shortly thereafter and exchanged the substance of their respective conversations with Sarsfield. Both concluded that Sarsfield's behavior was raising serious questions

regarding his capacity to continue running the bank.

(10) Sarsfield's Actions, July 1, 1991: At approximately 2:00 p.m. on July 1, 1991, Sarsfield call Tom Henning, Director Henning's brother, into his office and in the presence of Kent Glover advised Henning that they were having a serious problem with his brother, Director Henning, and that they were intent on resolving the problem in their favor. They informed him the meeting was only for the purpose of making this statement and that he could return to his duties. Later that day, Sarsfield orally instructed Rose Pobleti, SNB's cashier, in the presence of a number of SNb employees, that she was not to pay Director Henning his monthly Director/Counsel fee. Each of SNB's Directors are paid $250 for each monthly meeting; and Henning is paid an additional $250 as SNB counsel.

3. Possible Statutory Violations: The foregoing allegations if proved true could conceivably support the following statutory and regulatory violations:

(1) Employment Discrimination: Employment of Matthew Sarsfield on better terms vice a similarly situated female employee, Yvonne Petrunin, constitutes a possible violation of Title VII of the 1964 Civil Rights Act, 42 USC § 2000 e-2. It also possibly constitutes a breach of Sarsfield's fiduciary duty (BFD).

(2) Misleading Statements: Statements submitted by Sarsfield and Glover to OCC respecting executive duties individuals who would hold offices of President and Chairman of the Board could possibly be viewed as "misrepresentations" for purposes of 12 CFR 5.20 (2)(ii), (4), (11), and result in a revocation of SNB's charter and criminal penalties under 18 USC §1001.

(3) Wasting of Corporate Assets: The Glover-Carmel arrangement and the inordinate conduct of Sarsfield's consulting business could possibly be viewed as a wasting or gift of SNB's assets, which view could also be applied to the hiring of Granholm in connection with the Compliance Committee. International Bank v.

Bennet, 513 So.2d 1294 (Fla. App. 1987) [payment for unrendered services].

(4) Conversion of Corporate Opportunity: Sarsfield's various consulting services amounted apparently to a personal income in excess of $1M over the last five years. This income arguably came excess of $1M over the last five years. This income arguably came to him solely because of his status as Chairman/President of SNB and solely by virtue of his use of his employment time (estimated to be 2000 hours per year) while employed by SNB. Accordingly, since a bank officer has a fiduciary duty to make certain that all the economic reward flowing from the corporate opportunities made available to him as an officer of SNB inure equally to all other owners of the bank, it could arguably be said that Sarsfield has a fiduciary obligation to restore his consulting income to the bank as its rightful asset. Garner v. Pearson, 545 F.Supp 549 (MD Fla. 1982); First National Bank v. Smith, 436 F.Supp 824 (SD Tex 1977), affd in part, vacated in part, 610 F.2d 1258 (5th Cir. 1980.

(5) Circumvention of Board of Directors: Sarsfield's actions circumventing SNB's Board and proceeding to administer the bank without consultation with the Board, under a threat to pull the bank

down around him if challenged, is arguably in possible violation of the policy intendments underlying 12 USC § 71.

(6) Failure to Maintain Capital Ratio Requirements: Sarsfield's failure to develop core deposits or recapitalize SNB, in light of its perceived liquidity problems, and reliance solely on the banks equity line with the FHLB, could arguably create a violation of the capital ratio requirements of 12 CFR 3.10(e)..

(7) Stock Manipulation: Sarsfield's possible attempts to drive the price of the stock down to increase his holdings in the bank, could arguably constitute a BFD. His additional offer to procure a no interest loan for Director Henning to participate with Sarsfield in such a purchase, if implemented, could possibly support a violation of 12 USC §375(a) [cannot extend credit in any manner] as a preferential loan.

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OCC EXHIBIT 157

IN RE SEQUOIA NATIONAL BANK

Declaration of John F. Henning, Jr.

I, John F. Henning, Jr., hereby declare under penalty of perjury pursuant to the laws of the United States that:

1. I am a Director of the Sequoia National Bank located at 165 Post Street, San Francisco, California, 94104; and, since the founding of the bank through July 29, 1991, served as Counsel to the bank, for a retainer of $500.00 a month in lieu of a Director's fee of $250.00 a month. I make this Declaration based upon my personal knowledge of the events set forth herein except as to those matters declared upon information and belief which I believe to be true.

2. This Declaration is submitted in connection with that letter to October 4, 1991, addressed to the Board of Directors of Sequoia National Bank by Richard Silver, Esq., Attorney for the Comptroller of the Currency respecting the issue of possible retaliatory treatment against Ms. Beverly Williams, the bank's Vice-President and Cashier, a copy of which letter is attached hereto as Exhibit A.

3. The events and conversations pertinent to this issue began on June 28, 1991. On that date I received a telephone call from William S. Sarsfield at approximately 11:40 a.m. requesting me to have lunch with him and Kent Glover at the Commercial Club. They said it was an emergency situation that required my attention and that they would be at my office at 12:00 noon. They so arrived and we went directly to the Commercial Club.

4. I was not informed of the subject of the meeting until we had sat down, at which time Mr. Sarsfield advised me that I had failed as Counsel to the bank because I had not kept him apprised of dissension on the Board of Directors with the way he was handling matters. He asked me to spell out the problems the Board had with his administration of the bank's affairs. I informed him of the matters that were of concern to the Board. A report of the discussions had at this luncheon meeting is attached hereto and incorporated herein as Exhibit A. At approximately 2:30 p.m., after discussing the aforementioned problems, Mr. Sarsfield submitted a pre-typed resignation form to me as a Director of Sequoia National Bank with the admonition that he was not asking me to resign as Counsel for the bank, but to just get off the Board and he would pay my retainer indefinitely. I refused to resign and advised him that I took his offer to remain as Counsel as an attempt to bribe me to go away.

5. Thereafter, on July 5, 1991, at approximately 1:30 p.m., I had occasion to meet with Mr. Sarsfield with respect to the topics discussed at our luncheon meeting of June 28, 1991, two of which subjects involved the filing of the bank's call reports and the issue of sex discrimination regarding the payment of higher wages to his son Matthew Sarsfield vis-a-vis a more senior female teller, Yvonne Petrunin. I had previously advised Mr. Sarsfield that I had been informed that the employees had complained about his preferential treatment of his son only to be told by him that their dissatisfaction rested in the fact that their "last names were not the same as the bank's president." When I brought these matters to Mr. Sarsfield's attention again, he advised me that the only possible source of information regarding these complaints regarding discrimination and the preparation of the call reports was Beverly Williams; and, he stated that: "Beverly Williams is going to have to go." I made no reply to Mr. Sarsfield about the source of my information.

6. I was subsequently informed by Rory O'Flaherty that about this first week of July 1991, he overheard Mr. Sarsfield accuse Beverly Williams of insinuating a "computer virus" into the bank's software system. It was also in this first week of July that pursuant to a prior arrangement among Messrs. William Sarsfield, Kent Glover, Phil Bray, Norman Krug, Richard Van Valer, and myself, that we agreed to hold a Directors' meeting at the Commercial Club for a working lunch to discuss the issues identified as posing problems for the Directors. These problems were the subject of a Memorandum dated July 9, 1991, a copy of which attached hereto and incorporated herein as Exhibit C. This Memorandum had been previously hand delivered to Mr. Sarsfield at approximately 9:15 a.m. that morning prior to the meeting.

7. This meeting took place in a private meeting room at the Commercial Club. The parties arrived there at approximately 12:30 a.m. As the parties moved into the room to take their seats around the conference table, Mr. Sarsfield announced that there was "a critical problem that the Board had to deal with regarding Beverly Williams." He then stated that: "Beverly Willaims has control of all the liquid assets of the bank. She is in a position to do great harm to the bank; and, I and Kent are afraid that she can destroy the bank. We have to dismiss here immediately." Mr. Sarsfield's demeanor at this time was one of great agitation.

8. The Board's initial reaction to this statement was one of surprise with several responsive comments along the line of: "What's the problem, I thought whe was our best employee?" Mr. Sarsfield then stated that: "She has put a virus into the computer. She's put a virus into the system which will ruin the bank." This later statement perplexed many of the Directors as they asked what a virus was and what he was talking about. I then, in a forceful manner, asked him what evidence he had that Beverly Williams had done anything of the kind. Mr. Sarsfield made no reply other than to state that: "Well, she is in a position to do us great harm. She could put a virus into the system."

9. After we finished discussing the second point of the July 9, 1991, Memorandum regarding Mr. Sarsfield's son, Matthew, Mr. Sarsfield pointedly stated to me that: "Beverly is telling you all these things. She's the source of all this information, isn't she? She has to go. She has to go, don't you see." This outburst was ignored by the Directors at first. However, during each of the subsequent discussions on the various points raised in the Memorandum, Mr. Sarsfield repeated this accusation.

10. At approximately, 3:30 p.m., after the third or fourth outburst of this nature, I specifically placed a xerox copy of 12 USC §1831 before him on the table and said: "I will not stand for any retaliatory action against Beverly Williams or any other employee of Sequoia National Bank for supplying the Board with information regarding the bank's operations. Your statements raise serious implications of a violation of FIRREA; and, if it comes to a civil suit, I will be sitting in the witness chair to testify to your statements." This statement was made in a strong voice with the above-named Directors in attendance.

11. After making this statement, Kent Glover asked: "Whose side are you on anyway?" I replied that I was on the side of the law and the shareholders. Mr. Glover then responded that: "That's why we're going to have to get other counsel."

12. At a special meeting called for July 29, 1991, held on the premises of the law firm of Payne, Thompson Walker and Taaffee, located at 235 Montghomery Street, Suite 760, San Francisco, Mr. Sarsfield asked for and received my resignation as Counsel for the Bank.

13. On August 28, 1991, at the end of a regularly scheduled meeting of the Board of Directors, which was held in Suite 760 at 235 Montgomery Street, at approximately 4:30 p.m., I had occasion to exit

the meeting with Mr. Kent Glover. We were conversing over my general concern for the welfare for Beverly Williams; and, I stated that I thought Mr. Sarsfield's allegations regarding the insinuation of a virus into the software system by Beverly Williams was way off base. Mr. Glover replied to me that: "Bill's statements were admittedly a little crazy about that."

13. On September 25, 1991, at a regularly scheduled meeting of the Board of Directors held in Suite 760 at 235 Montgomery Street, to meet with various representatives of the Office of the Comptroller General (OCC), a recess was called after the OCC representatives had left the premises. The time was approximately 1:30 p.m. I was standing in the public hallway adjacent to the entry door to Suite 760 when I was approached by Mr. Sarsfield. He stated the following to me: "Please tell me who in the bank is talking with the Regulators. Give me their names. I promise there will be no retaliation if you just give me their names. I promise you that no one will be disciplined." I replied with the statement: "I don't know." Mr. Sarsfield then replied immediately: "Beverly has got to go. She has to go tomorrow."

14. At the time Mr. Sarsfield made this statement, Director Tom Niedermeyer was approaching us. I then stated to Mr. Sarsfield: "Bill will you repeat what you just said to me?"

Mr. Sarsfield said: "I take it back. I take it back."

15. On October 8, 1991, the date of this Declaration, I attended a meeting with the OCC at their offices at 50 Fremont Street, San Francisco. In attendance at that meeting besids the OCC representatives were myself, William Sarsfield, Kent Glover, and Edward Mevi, Esq. At the conclusion of the meeting, at approximately, 12:20 p.m., the aforementioned individuals were gathered on the corner of First and Market Streets discussing the ramifications and subject matter of our meeting with the OCC. During this discussion, Mr. Kent

Glover made the comment: "the real problem we have is all these people talking to the OCC. We can't control it." Mr. Sarsfield then interjected by addressing a question to me: "Well, tell me who's talking to them." I responded: "You shouldn't be asking me questions like that after getting the OCC"s letter, particularly in front of counsel. That's a crazy question to be asking me." Mr. Sarsfield dropped the subject.

Executed at San Francisco, California, on October 8, 1991.

/s/ John F. Henning, Jr.

OCC EXHIBIT 8 (p. 1 only)

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

IN THE MATTER OF SEQUOIA NATIONAL BANK
SAN FRANCISCO, CALIFORNIA

Consent Order

The Comptroller of the Currency of the United States of America (COMPTROLLER), through his National Bank Examiner, has examined the Sequoia National Bank, San Francisco, California (BANK), and his findings are contained in the Report of Examination, dated July 31, 1991 (ROE).

The BANK, by and through its duly elected and acting Board of Directors (BOARD), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated March 4, 1992, which is accepted by the COMPTROLLER. By this Stipulation and Consent, which is incorporated herein by reference the same as if fully set forth, the BANK has consented to the issuance of this Consent Order (ORDER) by the COMPTROLLER.

OCC EXHIBIT 160

November 18, 1992

MEMO TO FILE - SEQUOIA NATIONAL BANK

(Certif. No. 26907; Bank No. 061486; Charter No. 21337)

Re: Norman Krug Loans

P. Bolles has procured a descrambler program to read W. Sarsfield's coded computer disks. This process is being conducted in Las Vegas. The first item of interest is reflected by the correspondence of January 15, 1992, from Sarsfield to Paul Weiss forwarding a cashier's check for $70,000.00 to cover the City taxes on the Hotel California. There is no apparent paper track on this or indication where the funds came from. Bolles is checking. Enclosure One. Bolles also claims that he has a "suspicion" that funds may have been laudered through a loan to Steve Vida. Vida was a former officer of the World Trade Bank through which Krug obtained financing for his hotel enterprises. Bolles apparently suspects that the proceeds of the Vida loan were shared with Krug. The Vida oan is three months past due and the loan to value ratio was 104%. Enclosure (2). Bolles and Puccinelli report that the preliminary findings of the Lillick investigation are that Sarsfield, Krug and Glover have violated the loan limits etc. regarding the Krug Loan.

Written recommendations apparently have been prepared, amended, and circulated to the effect that the Board has the obligation to refer this matter to the OCC at the risk of personal liability according to Bolles. Sarsfield has launched a telephone campaign to all concerned to ameliorate the report. Lillick also notes that Sarsfield and Krug refused to cooperate or provide any information in the course of their investigation; and, for this reason, Lillick is recommending that Sarsfield, Glover, and Krug step aside as directors for their failure to co-operate. Bolles is unsure whether this notation will be contained in the final report. Bolles is of the opinion that when the matte comes to a vote, Sarsfield, Krug, Glover and Granholm will have to disqualify themselves in the matter, which would leave the determination of further action to Directors Henning, Bolles, Puccinelli, Van Valer and Bray. In apparent anticipation of an adverse finding and recommendation, Puccinelli has advised all that he cannot recommend any Directors' slate that would include Directors Sarsfield, Krug or Glover. By the same token, it is reported through Granholm that Sarsfield has already prepared a notice of the shareholders' meeting and a Sarsfield slate which will exclude the "troublemakers" who don't have the votes to save themselves. Granholm did not identify the "troublemakers."

OCC EXHIBIT 156

JOHN F. HENNING, JR.
100 BUSH STREET, SUITE 440
SAN FRANCISCO, CA 94104
TEL: 415-981-4400
FAX: 415-981-4599

CONFIDENTIAL COMMUNICATION TO
OCC ADDRESSEES

March 25, 1993

Ms. Joanne A. Hyder
National Bank Examiner
Specialty Supervision Division
Comptroller of the Currency
Washington, D.C. 20219

Re: Correspondence of March 20, 1993,
P. M. Collins-Lancaster, Sequoia
National Bank; Charter No. 21337

Dear Ms. Hyder:

I am in receipt of Ms. Collins-Lancaster's correspondence of March 20, 1993, with respect to the authority of the Compliance Committee under Article I(4) of the Consent Order executed by the Board on March 9, 1993, and those actions reported by the Minutes of the Compliance Committee dated March 18, 1993. Such minutes as were forwarded to you are correct and accurate.

However, I have been reliably informed that Ms. Collins-Lancaster has orally reported to you that at the Meeting of the Board of Directors on March 19, 1993, I advised the Board that it was the intention of the Compliance Committee to rehire those seven employees recently dismissed by Ms. Collins-Lancaster on March 12, 1993. Such a representation is completely false as can be confirmed by making due inquiry of any Board member in attendance. I have never made a statement of that kind at any time; nor, is it my intention to recommend that the Committee rehire said employees. As the Minutes of the Compliance Committee of February 26 and 27, 1993, attest, it was the recommendation of the Compliance Committee that such terminations be effected immediately.[1]

Such actions as are outlined in the Committee's Minutes of March 18, 1993, were considered by the Committee in the face of a serious erosion of the Bank's financial position and a concern for the absence of effective management over the last three weeks.

[1] All references to the Minutes or Reports of the Compliance Committee assume that you have been copied or forwarded all such documents that have been required and submitted by the Compliance Committee and/or the Bank under the terms of the Consent Order.

It has become apparent that much of the executive functions that the Committee assumed would be undertaken by Ms. Collins-Lancaster were delegated to consultants of her hiring. These items included, inter alia, the preparation of the proxy statement, preparation of various business plan scenarios, and the initial drafting of the Bank's Response to the Report of Examination of June 30, 1992. Putting aside the adequacy of the consultants' workproduct, these hirings added an estimated additional dollar cost to the Bank of $11,000.00 in the month of February alone; and it is quite clear that this continued delegation to hired consultants in all phases of the Bank's operations is a trend that will continue.

It also became apparent to the Compliance Committee that the majority control on the Board in the persons of Directors Sarsfield, Glover, Granholm, Bray and Krug, (hereinafter the "Majority"), has no intention of allowing the Compliance Committee to continue to fulfill its tasked functions under the Consent Order. This position was made clear by the statements of Ms. Collins-Lancaster and Board Chairman Victor Granholm to me on March 17, 1993, that henceforth the Bank would not honor any contractual obligations of the Compliance Committee and the Committee was no longer authorized, in their opinion, to engage the services of, or consult with, third parties.

The work of the Compliance Committee is viewed as a threat to the Majority's financial and interrelated interests, which fact was

well illustrated in their prior actions with respect to the "renewal" of the Sarsfield loan. Attached for your review is the Agenda for the March 1, 1993, Board of Directors Meeting in which former Chairman of the Board and Compliance Committee member Peter Bolles had set the items of "Director Loans - William C. Sarsfield" and the "Consent Order - Report of Examination. Agenda (3/1/93), Enclosure 1.

After discussion of the Business Plan was terminated, which discussion was conducted in executive session at the request of Directors Krug and Sarsfield, and before any discussion could be raised regarding Mr. Sarsfield's loan, Director Krug moved that the meeting be adjourned two days to the Organizational Meeting following the Shareholders' Meeting of March 3, 1993, for consideration of the remaining agenda by the "new" Board. This motion was successfully supported by the afore-referenced Majority. When I requested a copy of the Minutes of this meeting from Bank Secretary Kathy Long on March 22, 1993, I was informed that the Meeting was had in "executive session" and no Minutes were available.[2]

[2] The Bank's inability to maintain correct and reliable minutes has been historically cited to the Bank and is referenced in the June 30, 1992, Report of Examination. This situation had been remedied, as acknowledged by the OCC, by the appointment of Mr. Bolles as Corporate Secretary charged with maintaining the minutes. Mr. Bolles

The facts and circumstances of Mr. Sarsfield's loan can be confirmed by Ms. Stephanie Peters of the OCC/SF. Put succinctly, former President and CEO Sarsfield received an Equity Line loan of some $390,000.00 on August 20, 1987, with a five year term. Under the terms and conditions of that loan, Mr. Sarsfield had the option of meeting one of three monthly payment schedules, to wit: "...1 ½% of the remaining balance, $500.00 or the amortized monthly interest, whichever is the greater..." As confirmed by Ms. Collins-Lancaster upon my inquiry, Mr. Sarsfield had paid the least of these options, viz., the monthly accrued interest. The loan was due for renewal on August 20, 1992, and was put on the agenda for the August 24, 1992 Meeting of the Board of Directors.

On that date, the matter was called and a vote of less than a majority of the full Board voted to extend the loan. The vote of Director Niedermeyer was telephoned in after the meeting and a vote of one other Director was faxed in. In reviewing the loan in January 1993, the OCC instructed Ms. Collins-Lancaster to bring the Sarsfield loan back to the Board for review and approval by a majority of the total Board since it appeared to the OCC that a Regulation O violation had occurred in connection with the extension of the loan. Notwithstanding, Management did not bring the matter back for Board review, despite the insistence of former

past involvement in this regard was the primary reason for the Compliance Committee's action in hiring him for this purpose.

Chairman/Director Peter Bolles, until the March 1, 1992, Board Meeting.

On March 3, 1993, as a matter of the Agenda of the Organizational Meeting following the Shareholders' Meeting of that date, the continued agenda of Mr. Sarsfield's loan was addressed by former Director Charles Puccinelli. After observing that Mr. Sarsfield's assets were insufficient to support a renewal of the loan, Mr. Puccinelli put the direct question to Ms. Collins-Lancaster as to whether in her judgment the loan should be renewed on such an asset record. She answered in the negative. With Mr. Sarsfield absenting himself, the vote was called. Members Glover and Krug abstained; and I and Directors Puccinelli, Bray and Van Valer voted against the renewal of the note.

Subsequent thereto, Mr. Sarsfield took the position that since the Board had failed to vote against the renewal of his note within thirty days of its August 20, 1992, due date, it was automatically renewed, irrespective of the OCC's instructions to revisit the loan. When I brought this matter to the attention of Ms. Collins-Lancaster and asked her what steps she planned to take to call the note, she responded that she was taking no action until so instructed by an attorney. When I asked Director Glover what the procedures were for calling the note, he stated that the loan document was illegible regarding same. When I again asked for a copy of the Minutes of the March 3, 1993, Meeting, I was similarly advised by Ms. Long that there were no Minutes taken because it involved an "executive

session."

I am reliably informed as of this writing that, at the instruction of Mr. Sarsfield, Ms. Collins-Lancaster, despite the vote of the Board of Directors on March 3, 1993, against extending the note, made a notation in the loan file that Mr. Sarsfield's note has been extended for a three year period through August 1, 1995. The balance on the note as of this date is $389,937.54. No further action has been taken by Management to call Mr. Sarsfield's note nor secure and/or correct the payment schedule under the note whereby he met the least of the payment options.

This episode regarding Mr. Sarsfield's loan is all too typical of the approach by Bank Management to insider transactions and other items that have prevailed at Sequoia National Bank since its inception. The fact that a related loan to Director Krug has been charged off, over the objection of Director Sarsfield, by the Bank; and, two loans to Director Bray have been graded substandard by the OCC, should confirm the dearth of adequate Board and Management supervision of insider transactions.

It also should not come as a surprise, in light of Management's defiantly unauthorized extension of the Sarsfield loan, that at the opening of the Board of Directors' Meeting of March 19, 1993, Director Sarsfield announced that the Bank was submitting a "914" for Ms. Collins-Lancaster's approval as the Bank's CEO "...in light of her outstanding service to the Bank during her interim appointment."

The space of this letter is insufficient to catalogue the extensive pattern and practice of the Bank's misdeeds and defalcations. It is, however, critical to your understanding of the situation, and the necessary role of the Compliance Committee, to comprehend in some fashion how the Bank has operated during the last twelve months since the imposition of the Consent Order on March 9, 1992. To this end, I am enclosing for your review the Compliance Committee's "Response to: The June 30, 1992 Report of Examination." Response (3/1/93), Enclosure 2. This Report was prepared by the Compliance Committee under the direction of former Chairman/Director Peter Bolles upon the instruction of Ms. Collins-Lancaster by her Memo of February 26, 1992. The Response has been highlighted to emphasize those aspects of Management's continuing delinquency in meeting regulatory requirements.

By the Minutes of its March 18, 1993, Meeting, it is the intention of the Compliance Committee to reassert its authority under the Consent Order in terms of its oversight functions for the hiring of consultants and other "outside services" to the Bank as prescribed by Article I(4) of the Consent Order. This assertion is in keeping with the unbroken practice under which the Compliance Committee has operated since entry of the Consent Order. As can be confirmed by OCC/SF representatives D. Pearson, K. Grace, S. Peters, R. Tornborg, and R. Sanders, the Compliance Committee has kept the OCC apprised of all actions taken by the Committee; and, the Committee has been in constant consultation with the OCC with respect to the exercise of its authority under the Consent Order.

Indeed, consistent with Article I(4) of the Consent Order, the Compliance Committee engaged the Alford Group to conduct an executive search and make such recommendations as it deemed appropriate for filling the positions of CEO, SLO, and Cashier following severe criticism by the OCC of the Majority's "914" Application for President/CEO candidate, Paul Van Etten, which was vetoed by the OCC. It was also the Compliance Committee that retained the Catalano Consulting Group (Liquidity and Volatile Funds Management), JRC Associates (Independent Loan Review and ALLL Methodology), and independent Attorney Douglas N. Akay (Possible Violations of Law and Corrections).

And, in continuous consultation with the OCC, it was the Compliance Committee that recommended to the Board that Ms. Collins-Lancaster be engaged on a thirty day contract to fill the Interim President/CEO position (Article II) previously held by Director Granholm. The Committee also recommended that the Board engage Ms. Kathryn A. Stiles to fill the full-time position of Vice President, Controller/Cashier.

In exercising its authority and fulfilling its stated obligations under the Consent Order, the Compliance Committee has at all times complied with, and positively responded to, all directions of the OCC. As so counseled by the OCC, the Committee was successful in:

- disqualifying all Directors with defaulted or substandard loans from sitting on Bank Committees;

- securing in August 1992 the resignation of Director Kent Glover as the Bank's President (Article II);

- securing in January 1993 the resignation of William Sarsfield as the Bank's Chairman of the Board and CEO and in August 1992 allegedly excluding Director Sarsfield from further participation from management in the daily operations of the Bank (Article II);[3]

- procuring the filing of a Criminal Referral with respect to Regulation O violations pertaining to the related loans of Director Krug (Article XVII);

[3] I am reliably informed that since March 3, 1993, Mr. Sarsfield has been spending between two to four hours on a daily basis on the Bank's premises in consultation with Ms. Collins-Lancaster or otherwise apparently involved in the business of the Bank. In this regard, he has issued numerous hand written memoranda regarding items that he wants pursued or addressed by Ms. Collins-Lancaster. All of the foregoing is contrary to the OCC's admonition and understanding that Mr. Sarsfield would withdraw from the daily managment of the Bank. Perhaps it should be noted in this regard that Mr. Sarsfield merely relocated his offices to the fifth floor of the building while continuing to receive his mail and telephone messages through the Bank. While the Bank's telephone number is 415-781-0600, Mr. Sarsfield established his new telephone number as 415-781-0601. So much for his withdrawal from the affairs of the Bank.

- requesting (unsuccessfully) the resignations of Directors of Sarsfield, Krug and Bray from the Board;

- following the interim appointment of Ms. Collins-Lancaster, the Committee pursued, at the insistence of the OCC, and as a condition of the interim appointment, the candidacy of recommended nominations of senior executive officer positions, e.g., Mr. Owen J. Erickson (accepted another position); Mr. Samuel S. Mosunic (the candidate of the Compliance Committee), and Mr. Gordon Taubenheim (declined to serve in a bank controlled by Director Sarsfield) as candidates for President/CEO (Article II); Mr. Robert Mitchell, Mr. Peter Richmond and Mr. Randall A. Shell, as candidates for Senior Lending Officer (Article III).

All of the foregoing actions and all other matters undertaken by the Compliance Committee during its tenure have been recorded and reported upon in compliance with the Consent Order. Such reports and documentation now involve an eight foot swath of black bindered reports available for inspection in the Bank's Board of Directors Conference Room. This documentation has been prepared largely without staff assistance by the Bank; and, since January 6, 1993, without compensation to the Compliance Committee. The preparation of such reports, as illustrated by our enclosed Response to Report of Examination, exacts a tremendous effort in time and

energy by the members of the Compliance Committee who, in my opinion, have demonstrated a remarkable dedication to this process with no identifiable earthly reward save their own sense of fulfilling their fiduciary duty to the Bank's shareholders.

The Compliance Committee is not vested with the power of moral persuasion. Its power to effect change and secure compliance with the provisions of the Consent Order abide solely in its powers under Article I(4) over the Bank's securing of "outside services." While the Bank's Management would take issue with vesting the Compliance Committee with what it views as its "executive" functions in hiring personnel, it should be noted that the Consent Order does not pertain to hiring permanent staff.

More importantly, it should be pointed out that whatever the potential for abuse by the Compliance Committee, the Compliance Committee is answerable to the OCC as the first line of responsibility under Article I of the Consent Order; and, the record of regulatory abuse by the Majority Directors, most of whom are disqualified from serving on the Compliance Committee by Board Resolution and the terms of Article I, is manifest.[4] Consultants and counsel to the

[4] That the Bank should come to such a state is somewhat paradoxical in light of the "qualifications" of the Bank's chief officers and primary regulatory interface with the OCC in the persons of former Chairman of the Board and CEO, William C. Sarsfield, and former

Majority inevitably opine in accord with the dictates of the Majority, in one instance going so far as to assert that the National Banking Act contained no provision mandating an annual Shareholders' Meeting (Confirm: R. Silver, Esq., OCC/SF). See also: Footnote 5, infra.

Moreover, preservation of the continuing role of the Compliance Committee is essential to the maintenance of credible financial reports. With the resignation of the Bank's Cashier, Ms. Kathy Stiles, the credibility and reliability of the Bank's financial reporting is suspect, in my opinion, as the Bank has admittedly a shortfall in qualified personnel for recording and reporting operational transactions, much less implementing management information systems and preparing Board reports. The circumstances of Ms. Stiles' resignation, the details of which are known to Messrs. Grace and Tornborg, should be sufficient reason

President Kent Glover. Immediately prior to his association with Sequoia Savings/National Bank, Mr. Glover previously served as the Regional Administrator of National Banks for the Fourteenth Region of the OCC (SF), and prior thereto as Regional Administrator of National Banks for the Twelfth Region (Denver), with prior assignments as Deputy Regional Administrator of Banks and a National Bank Examiner. Mr. Glover spent over thirty years in the service of the OCC. Mr. Sarsfield also enjoys alumni status with the OCC. Mr. Sarsfield served as a National Bank Examiner with the OCC from 1963 to 1968.

to preserve the independence and functions of the Compliance Committee in order to assure the Bank's compliance with the financial reporting requirements of the Consent Order.

The Bank is in a critical situation where its continued viability as a financial institution is at stake. The capital of the institution diminishes by the day without intervention by Management. In fact, I question whether the Bank in the last thirty days has met the threshold of Tier I and II assets outlined in Article XV of the Consent decree, a question which cannot be answered with any decree of assurance under the current circumstances of financial reporting.[5]

[5] On March 3, 1993, Mr. Sarsfield distributed a "Preliminary Draft" from our Independent Auditors, Grant Thorton. The Report had been drafted by Mr. Kunio Yoshioka under the date of February 12, 1993. Preliminary Draft, Enclosure 3. Without explaining why the Report had not been given to the Compliance Committee or the other Directors, Mr. Sarsfield went on to say that it was essential that Mr. Yoshioka's Report be amended since its adoption would be fatal to the prospects of a successful sale of the Bank. Mr. Sarsfield stated that Mr. Yoshioka was amenable to changing his Report if the Business Plan presented an improved forecast for the Bank. When I asked the Chairman of the Board, Mr. Victor Granholm, and Ms. Lancaster-Collins to invite Mr. Yoshioka to the next meeting of the Board of Directors so that the Compliance Committee and the full Board could discuss the matter fully with him, my request was totally ignored. Mr. Yoshioka's

And, no discernible effort is being made to address our capital needs. Notwithstanding, the vote of the Board to sell off $6-$8 million in loans at its August 24, 1993, Meeting, in order to meet the Tier II requirements by shrinking the Bank's assets, no effective action has been taken to achieve this. No effort has been made to recapitalize the Bank as has been so forcefully urged by the OCC. Indeed, Director Sarsfield has repeatedly stated that the Board must resist any recapitalization that would dilute the Directors' stock.

All current efforts by the Majority have been directed to selling the Bank to various groups of shadowed credibility and questioned finances, presenting the OCC at most with the prospect of substituting one under-capitalized group for another. There is no operative Business Plan in effect. The Bank's plan, to this observer and Director, is to keep the regulatory agencies at bay until a buyer is found, avoiding at all costs any recapitalization requirements.

Report states that the cited circumstances pertaining to the Bank's operations "raise substantial doubt about the Bank's ability to continue as a going concern." The fact that Mr. Yoshioka, according to Mr. Sarsfield, is willing to negotiate the terms of his year-end audit of the Bank's 1992 performance based on prospective changes is incomprehensible, to this Director, from the standpoint of accounting standards. It is also one more reason why the Consent Order vested the Compliance Committee with the responsibility of hiring "outside services" for the Bank if there is to be any sense of integrity in the Bank's processes.

In the final analysis, the future of this bank is determinable solely by the OCC. Irrespective of the oft-claimed regulatory or statutory limitations that pertain to the involvement of the OCC in the affairs of the Bank, whether by omission or commission, the OCC has installed itself as the major player in the shaping of the Bank's direction and future. We have recently observed the salutary effects of measured intervention by the OCC in the strikingly similar case of Barbary Coast here in San Francisco, resulting in the removal of certain Directors and the imposition of Civil Money Penalties. The result is that Barbary Coast has turned around and appears on the road to financial rejuvenation. Should not Sequoia National Bank be given the same opportunity for recovery? Are the interests of our shareholders any less elligible for your consideration?

If it is the desire of the OCC that the Bank successfully merge or effect a sale to a larger and more sufficiently capitalized institution, how does the continued operational and financial disintegration of the Bank, with the prospect of attendant litigation, attract a responsible purchaser? What purpose does the OCC's indulgence of this course of action serve?

Alternatively, if recapitalization is truly desired on the part of the OCC, how does the continuing diminution of the Bank's capital below the mandated Tier I and II levels of the Consent Order serve any purpose? Would not a recapitalization order by the OCC or the FDIC best serve the interests of the shareholders, depositors,

and the public alike in ensuring the financial vitality of the Bank? Would not the issuance of such an order focus the attention of the Majority on the only practical solution to our present situation?[6]

[6] The Compliance Committee is aware of the potential for the infusion of $3 million in capital from a group led by Mr. Samuel Mosunic of Liberty Bank, which fact has been communicated to the Board and Mr. Grace, OCC/SF. However, the Majority has resisted all efforts to meet with or review Mr. Mosunic's proposal.

APPENDIX C

STATUTORY PROVISIONS

12 USC § 1818(b) Cease and desist proceedings

(b) Cease-and-desist proceedings

(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution- affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the agency in connection with the granting of any application or other request by the depository institution or any written agreement entered into with the agency, the agency may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution- affiliated party. Such hearing shall be fixed for a date not earlier than thirty days

nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection and subsections (c) through (s) and subsection (u) of this section shall apply to any bank holding company, and to any subsidiary (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956 [12 U.S.C.A. § 1841 et seq.], and to any organization organized and operated under section 25(a) of the Federal Reserve Act [12 U.S.C.A. § 611 et seq.] or operating under section 25 of the Federal Reserve Act [12 U.S.C.A. § 601 et seq.], in the same manner as they apply to a State member insured depository institution. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank).

(4) This subsection and subsections (c) through (s) and subsection (u) of this section shall apply to any foreign bank or company to which subsection (a) of section 3106 of this title applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under paragraph (3) of this subsection. For the purposes of this paragraph, the term "subsidiary" shall have the meaning assigned it in section 2 of the Bank Holding Company Act of 1956 [12 U.S.C.A. § 1841].

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Federal banking agency is the Comptroller of the Currency, to any national banking association chartered by the Comptroller of the Currency, including an uninsured association.

(6) Affirmative action to correct conditions resulting from violations or practices

The authority to issue an order under this subsection and subsection (c) of this section which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with respect to which such order is issued includes the authority to require such depository institution or such party to--

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if--

(I) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) restrict the growth of the institution;

(C) dispose of any loan or asset involved;

(D) rescind agreements or contracts; and

(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

(F) take such other action as the banking agency determines to be appropriate.

(7) Authority to limit activities

The authority to issue an order under this subsection or subsection (c) of this section includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) Unsatisfactory asset quality, management, earnings, or liquidity as unsafe or unsound practice

If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

(9) Expansion of authority to savings and loan affiliates and entities

Subsections (a) through (s) and subsection (u) of this section shall apply to any savings and loan holding company and to any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, to any service corporation of a savings association and to any subsidiary of such service corporation, whether wholly or partly owned, in the same manner as such subsections apply to a savings association.

(10) Standard for certain orders

No authority under this subsection or subsection (c) of this section to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and incomplete

12 USC § 1818(h) Hearings and judicial review

(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution is located unless the party

afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of Title 5. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h) of this section. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution- affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for

the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of Title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of Title 28.
(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

12 USC § 1818(i) Jurisdiction and enforcement; penalty
(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section or under section 1831o or 1831p-1 of this title, and such courts

shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section or under section 1831o or 1831p-1 of this title no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2) Civil money penalty

(A) First tier

Any insured depository institution which, and any institution-affiliated party who--

(i) violates any law or regulation;

(ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) of this section or any final order under section 1831o or 1831p-1 of this title;

(iii) violates any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

(iv) violates any written agreement between such depository institution and such agency, shall forfeit and pay a civil penalty of

not more than $5,000 for each day during which such violation continues.

(B) Second tier

Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who--

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach--

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such depository institution; or

(III) results in pecuniary gain or other benefit to such party, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) Third tier

Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution affiliated party who--

(i) knowingly--

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach, shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) Maximum amounts of penalties for any violation described in subparagraph (c)

The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is--

(i) in the case of any person other than an insured depository institution, an amount to not exceed $1,000,000; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of--

(I) $1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) Assessment

(i) Written notice

Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

(ii) Finality of assessment

If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) Authority to modify or remit penalty

Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) Mitigating factors

In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to--

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) Hearing

The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) Collection

(i) Referral

If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

(ii) Appropriateness of penalty not reviewable

In any civil action under clause (i), the validity and appropriateness of the penalty shall not be subject to review.

(J) Disbursement

All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) Regulations

Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) Notice under this section after separation from service

The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after August 9, 1989).

(4) Prejudgment attachment

(A) In general

In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 1821(d)(18) of this title) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that --

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) Standard

(i) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (A) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) State Proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by clause (i)), the relief sought under subparagraph (A) may be requested under the laws of such State.